

REPORT BY THE  
AUDITOR GENERAL  
OF CALIFORNIA

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**AN ANALYSIS OF THE STATE TEACHERS'  
RETIREMENT SYSTEM'S HIRING AND  
COMPENSATION OF ITS EXECUTIVE OFFICER**

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REPORT BY THE  
OFFICE OF THE AUDITOR GENERAL

P-498

AN ANALYSIS OF THE STATE TEACHERS' RETIREMENT SYSTEM'S  
HIRING AND COMPENSATION OF ITS CHIEF EXECUTIVE OFFICER

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Honorable Art Agnos, Chairman  
Members, Joint Legislative  
Audit Committee  
State Capitol, Room 3151  
Sacramento, California 95814

Dear Mr. Chairman and Members:

The Office of the Auditor General presents its report concerning the need for the State Teachers' Retirement System to adhere more fully to state contracting and employment procedures when it contracts for consulting services or hires staff.

Respectfully submitted,

*Thomas W. Hayes*  
THOMAS W. HAYES  
Auditor General

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## SUMMARY

The State Teachers' Retirement System (STRS) did not fully adhere to state contracting and employment procedures in hiring and compensating Mr. C. Michael McLaren as its Chief Executive Officer (CEO). As a result, in our opinion, the STRS did not sufficiently document that Mr. McLaren met all terms of the consulting contract or that it reimbursed him only for allowable travel expenses. In addition, the Teachers' Retirement Board (board) directed the STRS to enter into a contract for relocation expenses, including the purchase of Mr. McLaren's home; had it been executed, this contract would have violated state law. However, some of the board members subsequently expressed concern about whether the contract was legal, and one member, the State Controller, requested an opinion from the Attorney General. The Attorney General indicated that the board did not have authority to enter into the contract. Therefore, the STRS did not sign the contract or incur the inappropriate expenditures. Finally, as CEO, Mr. McLaren worked out of state without the necessary approval, and he submitted receipts for approximately \$6,800 in expenses that are not allowable. The STRS has stated that it will not pay Mr. McLaren for any of these expenses. Mr. McLaren was appointed as the CEO effective August 31, 1984, and was removed on December 12, 1984.

### Consulting Contract

Because the board did not expect Mr. McLaren to assume his full responsibilities as Chief Executive Officer before November 1984, the board decided to contract with Mr. McLaren in July 1984 so that he could participate in important STRS business. However, in contracting with Mr. McLaren, the STRS did not fully follow state contracting requirements. The STRS did not prepare detailed criteria and a mandatory progress schedule for the performance of the contract. Additionally, the STRS did not ensure that Mr. McLaren was providing

services in accordance with the contract. Furthermore, it did not evaluate Mr. McLaren's performance or withhold 10 percent of the contract fee pending completion of the evaluation in accordance with statutory requirements. Finally, the STRS did not define "actual reasonable expenses," which the STRS was required to reimburse.

By failing to fully adhere to state contracting requirements, the STRS did not obtain sufficient documentation to determine whether Mr. McLaren met all the terms and conditions of the contract. In addition, the STRS reimbursed Mr. McLaren for nearly \$2,900 more than it should have. Of this amount, \$2,540 was paid for airline tickets that Mr. McLaren did not use and for expenses of his wife and of board members. The STRS subsequently recovered the \$2,540, but it has not recovered \$360 paid for unallowable expenses.

#### Relocation Provisions

The Teachers' Retirement Board authorized a contract under which a home relocation company would purchase Mr. McLaren's home in Minnesota. The State would reimburse the company for expenses incurred in purchasing the home and in moving Mr. McLaren and his household goods to California. Although there are no circumstances in state law authorizing a state agency to purchase an employee's residence, the board acted upon its belief that this was an investment-related decision not subject to the jurisdiction of the State's control agencies. Before the relocation contract was executed, however, the STRS received an Attorney General's opinion, requested by the State Controller, stating that the board did not have the authority to execute the contract. Because the STRS did not sign the contract, it did not risk incurring up to \$52,500 in improper relocation expenses authorized by the board. However, the STRS has been billed for \$1,120 in expenses incurred by the relocation company acting on verbal authority from the STRS' Chief Legal Counsel.

### Employment as the Chief Executive Officer

While Mr. McLaren was employed as CEO, he spent 58 percent of the time outside of California. He was out of state for 40 of the 69 working days during the period of his employment. Mr. McLaren stated that the STRS gave him verbal approval to work on STRS business in Minnesota so that he could make arrangements to relocate his family. Mr. McLaren claimed that he worked on STRS business; STRS staff and the board Chairperson assumed that he was conducting STRS business while he was out of state. State law requires state employees to have prior approval by the Governor and the Director of Finance to work out of state. This approval was obtained for only 8 of the 40 days that Mr. McLaren was out of state. Additionally, we could document only that Mr. McLaren worked on STRS business for 8 of the 40 days he spent out of state. Thus, the STRS paid Mr. McLaren a salary for 32 days for which there is no documentation that he rendered services to the STRS and for a period when his out-of-state work violated state law.

### Recommendations

The State Teachers' Retirement System should comply with all state laws and administrative procedures in its future contracting and employment unless it can demonstrate that such compliance would significantly hamper its investment authority. The STRS should also limit the travel expenses of consultants, document services rendered before payment, and carefully monitor and review future consulting contracts. Additionally, the STRS should obtain an opinion from the Attorney General delineating the conditions under which the STRS would be authorized to circumvent state laws or regulations in making investment decisions.

Furthermore, the STRS should continue to withhold payment of the \$6,800 in travel expenses incurred by Mr. McLaren that are not authorized by state law. The STRS should also collect approximately

\$770 from Mr. McLaren for an unused travel advance, overpayments of travel expenses, and personal use of telephones. The STRS should review in detail any additional or pending claims by Mr. McLaren before payment. Finally, the STRS should determine whether any inappropriate salary payments were made to Mr. McLaren while he was working out of state.

## INTRODUCTION

The Public School Teachers' Retirement Salary Fund and Permanent Fund were established under the direction of the Department of Education in 1913. These became the State Teachers' Retirement System (STRS) in 1944. The STRS is the largest teachers' retirement system in the United States, with a total membership of 298,482 and total assets of \$12.8 billion, as of June 30, 1984.

The Teachers' Retirement Board (board) was formed in 1963 when the STRS became a separate state agency. The board is composed of the Superintendent of Public Instruction, the State Treasurer, and the State Controller, all of whom are ex-officio members, and eight other members who are appointed by the Governor. The Chief Executive Officer is responsible for the administration of the STRS according to the policies and rules adopted by the board.

Section 22000 et seq. of the Education Code gives the board exclusive authority to manage and operate the STRS and to administer the Teachers' Retirement Fund. The board establishes policies and rules, and it has the authority to adjudicate all applications for benefits under the retirement system.

Before July 1, 1983, the Public Employees' Retirement System provided all investment services for the STRS. However, Chapter 1434, Statutes of 1982, required the board to terminate its interagency

agreement with the Public Employees' Retirement System because of changing economic conditions and the increasing complexity of the investment market. The Legislature authorized the board to contract for the best possible investment advice, and the STRS subsequently contracted for an interim Chief of Investments and with three investment firms to provide investment services.

Recruitment of the  
Chief Executive Officer

In December 1983, the Chief Executive Officer (CEO) resigned after a lengthy appointment. To find a permanent replacement for the CEO, the STRS contracted with the State Personnel Board (SPB) in February 1984 to conduct a nationwide recruitment effort. The methodology that the SPB used to attract qualified candidates included the following: (1) developing newspaper and magazine advertisements, (2) developing application materials and a recruitment brochure for distribution, and (3) preparing a mailing list of all current administrators of state public employees' and teachers' retirement systems and related agencies. The advertised requirements for the position were three years of senior-level management experience with a pension fund or a public agency having an annual budget of over \$5 million and a master's degree or equivalent combination of education and experience. The advertised annual salary was \$60,000, plus benefits. Approximately 100 candidates applied for the position.

The terms of the contract also required the SPB to develop and apply specific criteria for selecting the most qualified candidates. Additionally, the STRS' CEO Selection Task Force (task force) instructed the SPB to develop rating criteria and to provide a recommended rating for every candidate. The SPB provided the STRS with a ranking of the applicants according to the following rating criteria:

<u>Rating Factor</u>	<u>Weight</u>
Nature and scope of administrative experience	60%
Experience with a governing board	20%
Experience in the legislative process	10%
Experience with a public pension fund investment portfolio	5%
Experience in actuarial funding methods	<u>5%</u>
Total	<u>100%</u>

With the board's approval, 14 candidates were invited to participate in a preliminary interview with the task force. The task force conducted these interviews in Sacramento on May 17 and 18, 1984. Upon completion of the oral interviews, the task force invited 5 candidates to appear for a final interview before the full board on June 8, 1984. Mr. C. Michael McLaren was one of the 5 candidates.

However, Mr. McLaren, who was serving as the Executive Director of the Minnesota Public Employees' Retirement Association, and one of the other candidates withdrew from the competition. Mr. McLaren

told us that he withdrew because the salary was not high enough and because he did not want to bear the possible expense of having a home in Minnesota and a home in California.

The board interviewed the three remaining candidates, decided to eliminate one from consideration, and informed the two finalists that the board would make its decision at its next meeting. Subsequently, one of the finalists withdrew because of family considerations. Unfortunately, the consensus of the board, following the second round of interviews, was to offer this candidate the position. Furthermore, the task force recommended that the board should not offer the position to the remaining candidate, and the board was reluctant to award the position to this candidate by default.

The task force contacted the three candidates who had withdrawn, including Mr. McLaren, whom the task force had considered an extremely competitive candidate. Mr. McLaren said that he was told that the board would attempt to increase the salary of the CEO and determine if it could pay for his relocation expenses. As a result, Mr. McLaren requested that the board reconsider him for the position. The board agreed to reconsider Mr. McLaren's candidacy and decided to arrange a continuation of its July 6, 1984 meeting, so that Mr. McLaren could complete the interview process. On July 10, 1984, the board reconvened, unanimously agreed to offer Mr. McLaren the position of CEO, and directed the Chairperson to negotiate the terms of employment. On July 13, 1984, Mr. McLaren accepted the position.

## SCOPE AND METHODOLOGY

The purpose of this audit was to determine the propriety of the contracts pertaining to Mr. McLaren that the board entered into or proposed to enter into, and to determine the propriety of all payments that the STRS made to Mr. McLaren.

We reviewed state laws and regulations as well as provisions of the State Administrative Manual governing contracts and the payment of salaries and travel and relocation expenses. We also reviewed STRS' contracts, STRS' financial records, and minutes of the board meetings. In addition, we reviewed Mr. McLaren's travel claims and receipts for travel and relocation expenses that he submitted to the STRS for reimbursement.

We met with members of the board and with STRS staff, and we interviewed Mr. McLaren.

## AUDIT RESULTS

### I

#### THE CONSULTING CONTRACT BETWEEN THE STRS AND MR. McLaren

Because the board did not expect Mr. C. Michael McLaren to assume his full responsibilities as Chief Executive Officer (CEO) of the State Teachers' Retirement System (STRS) before November 1984, the Teachers' Retirement Board (board) decided to contract with Mr. McLaren in July 1984 so that he could participate in important STRS business. However, in contracting with Mr. McLaren, the STRS did not fully adhere to state contracting requirements. The STRS did not prepare detailed criteria and a mandatory progress schedule for the performance of the contract. Additionally, the STRS did not ensure that Mr. McLaren was providing services in accordance with the contract. Furthermore, it did not evaluate Mr. McLaren's performance or withhold 10 percent of the contract fee pending the completion of the evaluation in accordance with statutory requirements. Finally, the STRS did not define "actual reasonable expenses," which the STRS was required to reimburse.

By failing to fully adhere to state contracting requirements, the STRS did not obtain sufficient documentation to determine whether Mr. McLaren met all the terms and conditions of the contract. In addition, the STRS reimbursed Mr. McLaren for \$2,900 more than it should have. Of this amount, \$2,540 was paid for airline tickets that Mr. McLaren did not use and for expenses of his wife and of board

members. The STRS subsequently recovered the \$2,540, but it has not recovered \$360 paid for unallowable expenses.

Intent of the Consulting Contract

When the board agreed to offer Mr. McLaren the position of CEO on July 10, 1984, it also authorized the Chairperson of the board to negotiate an interim consulting contract with Mr. McLaren to provide "consulting services in the STRS investment process prior to his arrival as the CEO on or about November 1, 1984." The board specified that the amount paid under the consulting contract should not exceed \$10,000. However, the contract, dated July 16, 1984, and signed both by the Assistant CEO for Finance and Administration and by Mr. McLaren, provided for an amount not to exceed \$15,000. A memorandum, dated November 19, 1984, states that subsequent discussions with the board's Chairperson, the STRS' Deputy CEO, and the STRS' Chief Legal Counsel indicate that the board's intent was to allow \$10,000 for consulting services plus "actual reasonable expenses" not to exceed \$5,000. The memorandum was signed by the board's Chairperson, the STRS' Deputy CEO, and the STRS' Chief Legal Counsel.

The Chairperson and the Chief Legal Counsel stated that the board had derived the \$10,000 figure based on the assumption that it was the maximum amount that could be awarded without obtaining approval from the Department of General Services. They further indicated that the STRS customarily provided for expenses when it awarded consulting

contracts; however, neither could recall how the \$5,000 amount was determined. The Assistant CEO for Finance and Administration said that her staff arrived at the \$5,000 figure by estimating the expenses that Mr. McLaren might incur while providing investment services to the STRS.

According to the Chairperson and other board members and further supported by contract documents, the board decided to contract with Mr. McLaren for the explicit purpose of providing the STRS "investment advice and consultant expertise in selection of investment personnel, external investment managers and the implementation of the Teachers' Retirement Board investment plans and objectives." The board considered it appropriate for the CEO-designate to participate in the selection and decision-making process. Since Mr. McLaren had advised the board that he would be unable to report as CEO before November 1984 and because the board was unwilling to delay implementing its investment management plan, the board offered the contract to Mr. McLaren so that he could participate in the process.

According to the transcript of Mr. McLaren's sworn testimony on November 30, 1984, before a Minnesota legislative committee investigating that state's retirement system, Mr. McLaren indicated that the purpose of the consulting contract with the STRS was to circumvent the maximum salary limitation prescribed by California statute for the CEO position. In an apparent contradiction, Mr. McLaren told us in an interview on December 28, 1984, that the

purpose of the consulting contract was to enable him to become familiar with the STRS' policies and procedures and with the STRS' investment program. Because of his obligation to the Minnesota Public Employees' Retirement Association, Mr. McLaren did not anticipate assuming the responsibilities of the CEO until November 1984, and since the STRS investment program was undergoing transition, he wanted to take part in the decision-making process.

Requirements and Terms of  
the Consulting Contract

On May 25, 1984, the board adopted a resolution directing the STRS to award investment contracts in accordance with state contracting laws, except for those provisions that require the Department of General Services' approval of consulting services contracts. The board believed that it would be unable to exercise its exclusive control over the STRS' investment operations if it were subject to the review and approval of state control agencies. Although the STRS did follow some of the statutory requirements in contracting with Mr. McLaren, the STRS did not prepare detailed criteria and a mandatory progress schedule for the performance of the contract. Additionally, the STRS did not establish procedures to ensure that the services were being delivered in accordance with the contract. As a result, Mr. McLaren did not sufficiently document that he provided the required services, and the STRS cannot be sure that it received all of the services it paid for.

In 1983, the Legislature determined that many state agencies were awarding consulting services contracts without adequate competition and that there were inadequate controls over payments for consulting services. Furthermore, the Legislature found that consulting services contracts were sometimes improperly administered, that reports produced by consultants under contracts were often not used, and that the reporting of consulting services contracts was inaccurate. As a result, in 1983, the Legislature enacted Article 5, Sections 10355 through 10382, of the Public Contract Code to achieve accountability and reduce expenditures by ensuring the development of standards for awarding consulting services contracts and for determining the cost-benefit of these contracts. Section 10357 of the Public Contract Code states that Article 5 applies to every state agency, including boards and commissions. The only exclusions are the Legislature and the Judicial Branch of government.

The board's May 25, 1984, resolution directed the STRS to award investment contracts in accordance with the general contract law governing state business and to ensure that the contracts conform to the format generally used by the State. However, the board's resolution also stated that Sections 10360 and 10361 of the Public Contract Code do not apply to the letting of investment contracts. These sections require the Department of General Services to review and approve all consulting contracts. The board based its position upon an opinion from its legal office indicating that the board cannot exercise exclusive control over the STRS' investment operations and contracts if

they are subject to review by and the ultimate approval of the State's control agencies.

Sections 10360 and 10361 of the Public Contract Code specify that consulting contracts do not take effect unless approved by the Department of General Services and that the Department of General Services is given sole responsibility for supervising contracting, including that done by state agencies having expressed or implied authority to contract directly. To clarify this matter of jurisdiction, we requested an opinion from the Legislative Counsel on the propriety of the board's resolution to exclude the STRS from Department of General Services oversight. As of the date of this report, we had not received the opinion.

In its contract with Mr. McLaren, the STRS adhered to the Public Contract Code in preparing a pre-evaluation form, in documenting the need for the contract, and in justifying a sole-source contract. However, the STRS did not fully follow the provisions of the Public Contract Code because it did not require sufficient documentation for services rendered.

The STRS also violated Section 10371 of the Public Contract Code by not preparing detailed criteria and a progress schedule for the performance of the contract. Additionally, because the contract specified that the STRS was to make progress payments to Mr. McLaren, the STRS was required by Section 10379 of the Public Contract Code to

establish procedures to ensure that the services were being delivered in accordance with the contract.

Mr. McLaren said that he reviewed board minutes and investment policies and recommendations and that he participated in interviewing prospective candidates for the Chief of Investments' position. He also indicated that he met with an investment consulting firm in Chicago to discuss the STRS' investment strategy. Additionally, Mr. McLaren stated that he gave his opinions on the use of index funds and on the hiring of internal and external investment managers. Finally, Mr. McLaren said that he had several conversations with board members and STRS staff and that he assumed an active role during the August meeting of the board's Investment Committee.

According to the STRS' Assistant CEO for Program, Policy, and Legislation, Mr. McLaren provided input on several investment-related topics during the August 1984 meeting of the board's Investment Committee. She also indicated that Mr. McLaren intended to work with the STRS' actuarial consultant and a consulting firm to revise the STRS' asset allocation strategy and that he recommended a revised strategy during the September 1984 board meeting. Finally, she said that she had several conversations with Mr. McLaren regarding the use of index funds and other investment matters.

The contract required Mr. McLaren to submit a detailed analysis of the costs of providing various services under the contract,

but the billings that Mr. McLaren submitted reflect only a general description of the work he performed and the expenses he incurred. Consequently, we were able to document only that Mr. McLaren participated in the August 10, 1984, meeting of the board and the September 21, 1984, meeting of the board's Investment Committee and that he made two trips to Chicago.

To evaluate the terms of the contract, we examined other contracts that the STRS had let to other investment consultants. We determined that the rate of \$80 per hour was reasonable for the type of services that Mr. McLaren was to provide. However, of the 21 contracts that we examined, 18 required the contractor to produce a written report. According to the Chairperson, the board assumed that Mr. McLaren, as the designated CEO, would automatically take an active role in the management and operations of the STRS and that the board never considered requiring him to submit a written report upon completing the contract.

We further noted that, although the contract was for three months, Mr. McLaren completed the contract within seven weeks. Mr. McLaren said that he worked more than the 125 hours provided for in the contract during July and August 1984. He stated that he was more concerned about the STRS' investment strategy and the selection of investment managers than he was about the hours he was working as a consultant under contract. He further indicated that, because of the abrupt and unanticipated resignation of the acting CEO, the board had

requested that he assume the responsibilities of the CEO in September rather than in November as originally intended.

Although the consulting contract was dated July 16, 1984, Mr. McLaren said he did not sign it until September 1984, after he had assumed the responsibilities of the CEO. However, the STRS' Assistant CEO for Finance and Administration recalls that Mr. McLaren signed the contract sometime prior to August 8, 1984, the date on which the Budget Officer encumbered the funds for the contract, and that she signed the contract in July. The Budget Officer confirmed that both parties had signed the contract prior to August 8. Section 10371(d) of the Public Contract Code states that work to be performed under a consulting services contract may not begin prior to receiving formal approval from the Department of General Services or, if such approval is not required, from the director of the agency entering into the contract.

Other than the date on which the Budget Officer encumbered the funds, there is no evidence as to when either party signed the contract. If the Assistant CEO for Finance and Administration did not sign the contract on or before July 18, 1984, the date on which Mr. McLaren indicated that he began working under the contract, the STRS was in violation of Section 10371(d). Furthermore, if Mr. McLaren did not sign the contract prior to September, he would have completed the terms of the contract before its formal execution.

Compensation and Expenses  
Under the Consulting Contract

The STRS paid Mr. McLaren \$10,000 in consulting fees and \$5,000 for the expenses he incurred while performing consulting services. Although the contract specified that Mr. McLaren would be reimbursed for "actual reasonable expenses," the STRS did not define what it considered "reasonable." Consequently, the STRS paid Mr. McLaren \$360 more than it would have if it had limited its reimbursement to the amount that a represented employee would have received. In addition to this total, the STRS' internal auditor determined that the STRS had overpaid Mr. McLaren \$2,540 in expenses for airline trips that he did not take and for expenses of his wife and of board members. Furthermore, the STRS did not evaluate Mr. McLaren's performance after he completed the contract or withhold 10 percent of the contract amount pending an evaluation of Mr. McLaren's performance in accordance with statutory requirements. As a result, the STRS did not determine whether Mr. McLaren met all of the terms and conditions specified in the contract before the STRS paid Mr. McLaren in full for his services.

The consulting contract between the STRS and Mr. McLaren specified that the STRS would pay Mr. McLaren \$80 per hour, not to exceed 125 hours, for a maximum fee of \$10,000. The contract also provided for "actual reasonable expenses," such as travel, communications, and other directly related costs that Mr. McLaren incurred in performing the services. These expenses were not to exceed \$5,000.

The contract required Mr. McLaren to submit three monthly billings "documenting in detail the services rendered and the expenditures incurred directly related to performance" under the contract. The contract states that, within 15 days after the completion of the contract, the board would evaluate Mr. McLaren's performance to determine whether Mr. McLaren completed the contracted work or services and whether Mr. McLaren met all of the terms and conditions specified in the contract. The contract further required the board to withhold 10 percent of the fee pending the completion of the contract and the evaluation of Mr. McLaren's performance. The contract was due to expire on October 16, 1984, but it could be extended if both parties agreed in writing.

In September, Mr. McLaren submitted his Statements of Investment Services Provided for the contract period. The statements show that Mr. McLaren worked 56 hours in July and 69 hours in August, for a total of 125 hours. In September, the STRS paid Mr. McLaren \$10,000, the full amount allowed for services under the contract.

During the first week of the consulting contract, the week of July 16 through July 20, 1984, Mr. McLaren reportedly worked 14 hours on STRS business. During this same period, Mr. McLaren took a trip to Green Bay, Wisconsin. Mr. McLaren said that he did not work on STRS business while on the trip but rather that he worked on STRS business the latter part of that week after he returned from the trip on July 18.

The consulting contract also specified that the STRS would reimburse Mr. McLaren for "actual reasonable expenses" incurred in providing investment services. In September 1984, Mr. McLaren submitted an expense claim that exceeded the \$5,000 maximum allowed by the contract. The STRS reimbursed Mr. McLaren \$5,000.

Section 1243 of the State Administrative Manual requires consulting contracts to specify the amount that the contractor is to be reimbursed for transportation costs and the amount for per diem; these reimbursements generally should not exceed amounts paid to an agency's represented employees. Although the terms of the contract state that Mr. McLaren would be reimbursed for "actual reasonable expenses," the terms do not define "reasonable."

When the STRS reimbursed Mr. McLaren for his expenses, the STRS did not audit the individual expense receipts that Mr. McLaren submitted. However, in November 1984, the STRS directed its internal auditor to review the expenses paid under the contract. The internal auditor's review showed that the STRS had overpaid Mr. McLaren \$2,540. He had submitted, and was reimbursed for, three round-trip airline tickets between Minnesota and the west coast; Mr. McLaren had not taken these trips during the contract period, however. Mr. McLaren admitted that he had not taken the trips and that he had exchanged the tickets for other airline tickets that he used to commute between Minnesota and California while he served as the CEO.

Mr. McLaren stated that he had discussed the unused airline tickets with the Chief of STRS' Accounting Division at the time he submitted his expense receipts. However, the Chief of the Accounting Division told us that he did not have any discussion with Mr. McLaren about these airline tickets or any of the expenses that Mr. McLaren submitted. The three round-trip airline tickets cost \$790, \$800, and \$924, and they were to be used on August 19, 23, and 29, respectively. The internal auditor's review also showed that Mr. McLaren had submitted receipts and had been reimbursed for expenses that were incurred by his wife and members of the board.

Based on the findings of the STRS' internal auditor, the STRS disallowed \$2,539.07 of the \$5,000 that it had previously reimbursed to Mr. McLaren. On November 30, the STRS requested that Mr. McLaren repay this amount after he had an opportunity to review the internal auditor's findings. Mr. McLaren repaid the entire \$2,539.07 on December 5, 1984. Subsequent to the internal auditor's review, Mr. McLaren submitted two additional expense receipts, totaling \$22.00, for allowable expenses incurred during the contract period.

We also reviewed the expense claims that Mr. McLaren submitted under the consulting contract. We determined that, if the STRS had limited its reimbursement to the amount that a represented employee would have received, only \$2,122.55 of the \$2,482.93 would have been allowed. Therefore, the STRS reimbursed Mr. McLaren \$360.38 more than it would have if had followed the Department of Personnel

Administration's regulations governing travel reimbursements. Under Department of Personnel Administration regulations, Mr. McLaren would have been provided a per diem allowance for each day of travel during his trip of August 6 through 13, 1984. In contrast, the STRS reimbursed Mr. McLaren for the actual expenses he incurred. Additionally, the Department of Personnel Administration would not have permitted reimbursement for first class air travel and the rental of a luxury car. (Appendix A provides a detailed chronology and schedule of expenses that Mr. McLaren submitted for the period in which he was both a contractor and an employee.)

Finally, the STRS violated the Public Contract Code because it did not promptly complete a post-evaluation of Mr. McLaren's performance to determine whether he completed the contracted services and met the terms and conditions specified in the contract. Section 10369 of the Public Contract Code requires that agencies conduct a post-evaluation by completing a contract evaluation form within 30 days of the completion of a contract. Moreover, the terms of the STRS' contract specified that the STRS would conduct this evaluation within 15 days of the completion of the contract. Although the contract was completed on August 30, 1984, the STRS did not complete the contract evaluation form until December 13, 1984, two days after we requested a copy of it. The form was signed by the Chairperson and indicates that Mr. McLaren fulfilled the requirements of the contract.

Furthermore, the STRS did not withhold 10 percent of the fee pending the completion of the evaluation, as required by the Public Contract Code. Section 10379 of the Public Contract Code requires that, when a contract provides for progress payments, an agency must withhold 10 percent of the contract amount pending completion of the contract and an evaluation of the contractor's performance. The terms of the STRS' contract with Mr. McLaren also provide that 10 percent of the fee would be withheld pending the completion of the contract and an evaluation of Mr. McLaren's performance. The STRS considered the contract completed on August 30, 1984. On September 13, 1984, the STRS submitted to the State Controller a claim for the full amount of the contract. The State Controller issued a warrant for \$15,000 on September 14, 1984, 15 days after the completion of the contract. As mentioned above, however, the STRS had not completed the required evaluation of Mr. McLaren's performance by that date.

II

THE PROVISIONS TO PROVIDE  
FOR MR. McLAREN'S RELOCATION

The Teachers' Retirement Board directed STRS staff to enter into a contract to have a home relocation company purchase Mr. McLaren's home in Minnesota and to have the State reimburse the company for expenses incurred in the purchase of the home and in moving Mr. McLaren and his household goods to California. Although there are no circumstances in state law authorizing a state agency to purchase an employee's residence, the board acted upon its belief that this was an investment-related decision not subject to the jurisdiction of the State's control agencies. Before the relocation contract was executed, however, the STRS received an Attorney General's opinion, requested by the State Controller, which stated that the board did not have the authority to execute the contract. Because the STRS did not sign the contract, it did not risk incurring up to \$52,500 in improper relocation expenses. However, the STRS has been billed for \$1,120 in expenses incurred by the relocation company acting on verbal authority from the STRS' Chief Legal Counsel.

Proposed Relocation Contract

One of Mr. McLaren's major concerns with regard to accepting the CEO position was the expense involved in relocating from Minnesota, and he told us that his acceptance of the position was predicated on

the STRS' development of a relocation package. Mr. McLaren stated that he had no intention of paying for the expenses involved with moving his family to California or of assuming the responsibility for mortgages on two homes. Board members with whom we spoke do not recall that Mr. McLaren's acceptance of the CEO position was contingent upon an acceptable relocation package. However, in its July 1984 meeting, the board did discuss Mr. McLaren's concerns and directed STRS staff to determine what could be done to relocate Mr. McLaren.

On August 10, 1984, the board adopted a resolution authorizing the STRS staff to enter into a contract for relocation services "to facilitate the board in the hiring and retention of key personnel essential to the administration and investment of the Teachers' Retirement Fund." Furthermore, the board gave the Chairperson the authority to approve any such contract. The resolution was based on the board's interpretation of Sections 22222 and 22224 of the Education Code, which address the board's exclusive control over the investment and administration of the Teachers' Retirement Fund. The resolution states that "the selection and retention of the CEO is critical to the success of a cohesive, viable investment plan and that such selection is therefore an investment-related decision." The resolution further indicates that to obtain the most qualified individual to serve in the position of CEO, the board recognized that it would have to bear the costs of relocating that individual.

The STRS' Chief Legal Counsel stated that, pursuant to the board's resolution, she obtained the names of firms that provided relocation services. She then contacted several of the firms and found that some would perform the services only if the STRS would guarantee a certain number of relocations per year. The Chief Legal Counsel further stated that she evaluated the remaining firms and determined that Home Purchase Corporation (HPC), a Portland, Oregon, company that specializes in relocation services, could provide the least costly alternative. On August 15, 1984, the Chief Legal Counsel began negotiating a contract with the HPC.

As a result of the negotiations, the HPC sent the STRS a contract, dated September 24, 1984, and signed by the HPC's president. Under the terms of this proposed contract, the HPC would make a binding offer to purchase Mr. McLaren's residence in Minnesota, and the STRS would be responsible not only for the costs of maintaining and selling the residence but also for any loss incurred in the sale. Mr. McLaren would be paid directly by the HPC at the appraised market value of the property.

Under Section 19842(a) of the Government Code, the Legislature delegated to the Department of Personnel Administration the power to authorize the payment of all or part of the travel and moving expenses of persons who change their place of residence to accept employment with the State. Under Sections 599.719 and 599.723 of Title 2 of the California Administrative Code, the Department of Personnel

Administration permits reimbursement for travel at a rate of six cents per mile and the movement of household furnishings up to 11,000 pounds. Under no circumstances does the Department of Personnel Administration permit the purchase of a home from a relocating or newly hired employee. Therefore, the relocation contract that the STRS negotiated would not have been authorized by state law.

The STRS was ready to present the proposed contract with the HPC to the Chairperson for execution. However, some of the board members expressed concern over the contract, and the board decided to discuss the matter further during its October 19, 1984, meeting. After discussing the purpose of the contract, the board passed a motion to direct the Chairperson and the STRS to proceed with the relocation contract. Of the eight board members present, only the two representing the State Controller and the State Treasurer cast dissenting votes.

In a memorandum dated October 31, 1984, the Chief Legal Counsel informed the Chairperson that an impending Attorney General opinion, requested by the State Controller, would indicate that the board does not have the authority to enter into the relocation contract and that Department of Personnel Administration regulations do not address the issue. The memorandum indicates that the Attorney General's analysis would not deal with the issue of whether the board, under its exclusive investment authority, has the power to enter into the relocation contract if the board deems it to be in the best

interest of the Teachers' Retirement Fund. Nevertheless, the memorandum continues, a written opinion from the Attorney General, who represents both the State Controller and the board, cannot be ignored. The memorandum further indicates that, if the Attorney General's opinion states that the contract and resulting expenditures are outside the authority of the board and the approval of the Department of Personnel Administration, the State Controller would challenge the legality of the payments.

The Chief Legal Counsel told the Chairperson that the board's defense against such a challenge would rest on whether the board, under its exclusive investment authority, has the power to make investment-related decisions free from the jurisdiction of state control agencies. According to the Chief Legal Counsel, the outcome of this challenge would determine whether Mr. McLaren's hiring was solely an investment-related decision. It was the Chief Legal Counsel's opinion that, inasmuch as the CEO is, by statutory definition, the chief administrative officer of the STRS, the board could not successfully defend its position.

The Chief Legal Counsel concluded that the board should test its exclusive investment authority against state controls only when the facts are strongly in favor of the board and its investment function. Therefore, although the board had directed the Chairperson and the STRS to proceed with the proposed relocation contract, the Chief Legal Counsel recommended that the STRS should not execute the relocation

contract if the Attorney General states that the board is without authority to enter into and the Department of Personnel Administration is without authority to approve such a contract.

On November 1, 1984, the Attorney General advised the State Controller that the relocation contract, as proposed, would not be authorized by Section 19842 of the Government Code and the Department of Personnel Administration regulations that implement that section. The Attorney General was not aware of any other authority that allowed such action by the board. The Attorney General's conclusion was based on the understanding that the contract was not to be considered as an investment of funds. Thus, the Attorney General tested the authority of the board under the statutory provisions pertaining to employee reimbursement and not under the provisions applicable to the board's investment authority. As a result of the Chief Legal Counsel's memorandum and the Attorney General's opinion, the STRS did not sign the contract with the HPC.

#### Potential Costs Under the Proposed Relocation Contract

Under the terms of the relocation contract with the HPC, the purchase of Mr. McLaren's residence would have been based on the appraised market value of the property. If Mr. McLaren accepted the company's offer, the HPC, through a contract of sale, would pay Mr. McLaren for his home and take title to the property. The HPC would then be obligated to make all reasonable efforts to sell the residence,

to maintain the property, and to make mortgage and interest payments until it sold. Also included in the contract was an agreement to provide for the movement of Mr. McLaren's household goods.

The STRS, in turn, would be required to pay for all direct costs incurred in maintaining the residence until sale and in moving the household goods. These costs include mortgage interest, interest on equity advances (prime rate plus 0.5 percent), property taxes, insurance, utilities, maintenance, and appraisal fees. Additionally, the STRS would be required to pay all closing costs and related expenses incurred by the HPC, including any loss on the sale of the residence below the appraised market value. However, the STRS would also receive any gain if the residence were sold for more than the appraised market value. Finally, the STRS would pay the HPC a service fee based on the appraised market value. The STRS' Legal Office estimated that the contract would cost between \$36,500 and \$52,500, plus the movement of household goods.

The president of the HPC told us that on October 1, 1984, the Chief Legal Counsel verbally instructed him to conduct the necessary appraisals on Mr. McLaren's home in Minnesota and to prepare all necessary documents to present an offer to Mr. McLaren for purchasing his home. The Chief Legal Counsel told us that she instructed the HPC to conduct the appraisals and to prepare the required documentation based upon the board's August 10, 1984, resolution.

As stated previously, the STRS did not sign the relocation contract with the HPC even though it had been authorized to do so by the board. Therefore, the STRS did not incur the full liability described above. However, the STRS has received an invoice from the HPC, dated November 9, 1984, for \$1,120. This total includes an appraisal fee, termite inspection and title insurance charges, and a service fee.

In a letter dated December 27, 1984, the Chief Legal Counsel informed the president of the HPC that, as a result of the Attorney General's ruling that the STRS has no legal authority to enter into the relocation contract, the STRS is not authorized to pay the invoice. The Chief Legal Counsel advised the president that a claim against the State could be filed with the Board of Control or payment could be pursued through the state courts. The president of the HPC told us that he plans to submit the invoice to the Board of Control for payment.

### III

#### MR. MCLAREN'S EMPLOYMENT AND COMPENSATION AS CHIEF EXECUTIVE OFFICER

The STRS appointed Mr. McLaren as its CEO effective August 31, 1984. His salary for the position was \$73,780 per year. Between the appointment date and December 12, 1984, when he was removed from the position, Mr. McLaren spent more than half of his time out of state. However, Mr. McLaren did not have the necessary prior approval from the Governor and the Director of Finance for 32 of the work days he spent out of the State. In addition, Mr. McLaren has submitted receipts for approximately \$6,800 in unallowable expenses he incurred during the period of his employment. Therefore, these expenses cannot be reimbursed under state laws or regulations.

#### Employment as CEO

Article VII, Section 4(e), of the State Constitution entitles the STRS to one position that is exempt from civil service requirements. According to Section 19825 of the Government Code, the STRS must obtain Department of Personnel Administration approval for the salary level that the STRS establishes for that exempt position.

Although Mr. McLaren's appointment became effective beginning on August 31, 1984, Mr. McLaren did not sign his appointment papers until October 20. According to the Deputy CEO and the Assistant CEO

for Finance and Administration, Mr. McLaren did not sign his appointment papers until the STRS determined whether he could be hired under contract, similar to the contract arranged for the Chief of Investments. Mr. McLaren told us that it was the STRS' decision to delay the appointment until all hiring alternatives were considered.

The STRS' Legal Office analyzed the alternative of contracting for Mr. McLaren's services instead of appointing him to an exempt position. The Legal Office determined that the board could contract for Mr. McLaren's services pursuant to Section 19130(b)(1) of the Government Code, which authorizes personal service contracts in lieu of appointments to exempt positions. The Legal Office also determined that the maximum payment allowed under this alternative would be set at the rate authorized for the exempt position plus a percentage attributable to fringe benefits. Thus, contracting for Mr. McLaren's services would result in an annual salary of \$97,390.

The Legal Office suggested that, under this alternative, the board could pay for some of Mr. McLaren's relocation and moving expenses; however, the Legal Office advised the board that, in providing for relocation expenses, it adhere to rules governing state employees who have been required to relocate by their appointing power. The Legal Office also indicated that the Department of General Services' approval of the contract or any subsequent amendments would not be required but that the STRS may be criticized in the future for not following competitive bidding procedures.

Finally, the Legal Office concluded that, regardless of the method that the board selected, Mr. McLaren would only be entitled to reimbursement for travel that was necessary to fulfill the duties of his position and that was in accordance with established state guidelines. The Legal Office also concluded that Mr. McLaren would be considered an "officer of the State" under either alternative and, as such, would fall within the statutory prohibition on out-of-state travel and require advance approval for such travel.

The Legal Office stated that appointing Mr. McLaren to the exempt position may be the easiest method although contracting with Mr. McLaren may be closer to what the board and Mr. McLaren had envisioned. However, the Legal Office did not recommend that Mr. McLaren be hired as a contractor. The Legal Office stated that contracting for Mr. McLaren's services was definitely a viable alternative despite the practical problems that the STRS may experience in administering the contract.

#### Compensation During the Employment Period

During the period that Mr. McLaren was employed as CEO, he spent 58 percent of the time outside of California. He was out of state for 40 of the 69 working days during this period. Mr. McLaren stated that the Chairperson gave him verbal approval to work on STRS business in Minnesota so that he could make arrangements to relocate his family. Mr. McLaren claimed that he worked on STRS business; the

STRS staff and the Chairperson assumed that he was conducting STRS business while he was out of state. State law requires employees to have prior approval by the Governor and the Director of Finance for work out of state. This approval was obtained for only 8 of the 40 days that Mr. McLaren was out of state. We could also document only that he worked on STRS business for 8 of the 40 days he spent out of state. As a result, the STRS paid Mr. McLaren a salary for 32 days for which there is no documentation that he rendered services to the STRS and for a period when his out-of-state work violated state law.

#### Salary

Before the board appointed Mr. McLaren to the CEO position, the board had established an annual salary of \$60,000 for that position. According to the Chairperson, the board discussed the possibility of raising the salary level during its meeting on July 10, 1984. On November 1, 1984, the Department of Personnel Administration formally approved a salary increase to \$73,780, retroactive to August 31, 1984. This salary is equivalent to the salaries earned by the directors of major state departments.

The board officially appointed Mr. McLaren as its CEO effective August 31, 1984. Mr. McLaren was paid \$6,148.33 per month, or \$73,780 per year. The STRS paid Mr. McLaren a salary for September, October, and November 1984, for a total of \$18,444.99. Mr. McLaren was officially removed from his position on December 12, 1984, and the STRS

has not paid Mr. McLaren for the time that he was employed during December.

Our review of the documentation showing Mr. McLaren's location during his employment period shows that he spent a significant amount of time in St. Paul, Minnesota, and other locations outside California. Mr. McLaren worked a total of 69 days during his employment period. Mr. McLaren spent 40 of these 69 days outside California.

As an exempt employee, Mr. McLaren is required to average 40 hours per week over 12 months. He is not required to work specified hours of the day or to work only at his headquarters. However, he is required to be performing business for the State of California during the period for which he is paid. Furthermore, Government Code Section 11033 states that no state officer or employee may be absent from the State on state business without the prior approval of the Governor and the Director of Finance. To comply with this section, the State Administrative Manual requires agencies to obtain approval in advance for all out-of-state travel. Mr. McLaren had the necessary approval for only 8 of the 40 days he was out of state.

Mr. McLaren said that the Chairperson had given him verbal approval to conduct STRS business in St. Paul, Minnesota, so that he could also make the necessary arrangements to relocate his family to California. He further stated that he conducted STRS business, such as reviewing various documents and discussing investment matters with

board members by phone, while he was out of the State. STRS staff and the Chairperson told us that they assumed that Mr. McLaren was conducting STRS business during the time he spent out of the State. However, after reviewing Mr. McLaren's travel receipts, we could verify only that Mr. McLaren was performing STRS business during 8 of the 40 days he spent out of state.

#### Travel Expenses

Mr. McLaren has submitted for reimbursement approximately \$6,800 in travel expense receipts for trips he took between Sacramento and St. Paul, Minnesota, other out-of-state trips, and lodging and subsistence expenses he incurred while staying in Sacramento. These expenses violate state laws or regulations and, therefore, cannot be paid. Because he was not eligible to receive reimbursement for relocating to Sacramento and because the necessary advance approval for the out-of-state trips was not obtained, none of the expenses are allowable under the State Administrative Manual or Department of Personnel Administration regulations. The STRS has informed us that none of these expenses will be paid. In addition, Mr. McLaren owes the STRS approximately \$770 for an unused travel advance, for overpayments of travel expenses, and for personal telephone use.

The travel expenses that Mr. McLaren submitted or that the STRS paid directly to travel agencies or hotels during Mr. McLaren's employment period total \$9,798.57. Of this amount, \$5,030.37 is for

expenses that Mr. McLaren incurred while traveling between St. Paul and Sacramento and for temporary residence in Sacramento while making arrangements to relocate his family to California. The STRS has not reimbursed Mr. McLaren for any of these expenses. The remaining \$4,768.20 in expenses are for trips that Mr. McLaren took on STRS business. Of this amount, the STRS has not paid Mr. McLaren \$1,765.75 for expenses he incurred on out-of-state trips for which he had not received the necessary prior approval. Finally, the STRS has not recovered a \$400 travel advance made to Mr. McLaren on November 21, 1984.

Mr. McLaren submitted receipts totaling \$5,030.37 for expenses he incurred while arranging to relocate his family during his employment period. These receipts are for four round-trip airline tickets between St. Paul and Sacramento and for hotel and subsistence expenses he incurred while staying in Sacramento.

According to Department of Personnel Administration regulations in Title 2 of the California Administrative Code, Mr. McLaren is not entitled to be reimbursed for any expenses related to relocating his family to Sacramento. Sections 599.714 and 599.722 of the code provide reimbursement for expenses only if a current state employee is required to relocate his residence because of accepting an assignment elsewhere in the State. Section 599.723 of the code specifies that persons who change their place of residence to accept employment with the State will be reimbursed only for some travel and

moving expenses in changing residences. However, since Mr. McLaren did not actually change his place of residence, he is not eligible for reimbursement of travel or moving expenses. Furthermore, none of Mr. McLaren's trips between St. Paul and Sacramento were approved out-of-state trips as required by Government Code Section 11032.

Mr. McLaren told us that he never received a copy of the Department of Personnel Administration regulations concerning travel and relocation expenses even though he had requested a copy several times. He stated that STRS staff told him that he was eligible for reimbursement of relocation expenses up to a period of 60 days. He added that the STRS provided him with a memorandum and a letter that indicated he would be reimbursed for relocation expenses incurred while traveling between St. Paul and Sacramento. The Deputy CEO told us that Mr. McLaren was told that he was not eligible for reimbursement of expenses to relocate to Sacramento. A representative of a board member also told us that he told Mr. McLaren that he would not be eligible for the 60 days of relocation expenses. The Deputy CEO also stated that the memorandum and letter Mr. McLaren referred to do not constitute approval for these expenses.

According to the Deputy CEO, the memorandum, dated August 9, 1984, was prepared by the STRS Legal Office at Mr. McLaren's request. The memorandum analyzes two alternatives for paying to relocate Mr. McLaren and his family to Sacramento. The first alternative is to obtain prior approval from the Department of Personnel Administration

to reimburse Mr. McLaren as a state employee who was required to relocate. The second alternative was to establish Mr. McLaren's official headquarters in Minnesota and subsequently transfer his headquarters to Sacramento so that he would be eligible for reimbursement under regular Department of Personnel Administration regulations.

The Department of Personnel Administration informally notified the STRS that the first alternative would not be granted. The Department of Personnel Administration would only allow reimbursement at the rate of six cents per mile and the movement of 11,000 pounds of household goods. In an August 20, 1984, letter to a board member's representative, the STRS proposed the second alternative, establishing Mr. McLaren's headquarters in Minnesota and paying for up to 60 days of relocation expenses. The board member's representative discussed the proposal with the State and Consumer Services Agency. According to the Deputy CEO, the board member's representative informed him several days after the date of the letter that this alternative would not be approved. The Deputy CEO told us that he then discussed the disapproval with Mr. McLaren.

Mr. McLaren has submitted or the STRS has paid directly to travel agencies or hotels \$4,768.20 for expenses he incurred while conducting STRS business during his employment as CEO. The STRS has reimbursed Mr. McLaren or directly paid \$3,002.45 of this amount. The remaining \$1,765.75 in expenses are for trips that Mr. McLaren took

without the necessary approval for out-of-state travel; the STRS has not reimbursed him for these expenses. In addition, the STRS has overpaid Mr. McLaren \$302.00 in travel expenses and not recovered \$71.19 in charges for personal telephone calls. The STRS should recover the \$373.19 from Mr. McLaren.

On September 17, 1984, Mr. McLaren took a trip from St. Paul to Chicago at a cost of \$331.50. Between October 2 and 5, 1984, Mr. McLaren took a trip from St. Paul to New York at a cost of \$1,390.12. Mr. McLaren also incurred \$44.13 in expenses while in St. Paul. Although Mr. McLaren submitted these expenses for reimbursement, his out-of-state travel had not been approved. Section 732 of the State Administrative Manual requires the prior approval of the agency secretary, the Department of Finance, and the Governor for out-of-state travel.

Mr. McLaren said that he took the October trip to New York to meet with a consulting firm that the STRS has contracted with to conduct a search for a STRS Chief of Investments. Mr. McLaren said that the firm was interviewing candidates for the position and that he wanted to participate in the interviews. He also said that the STRS' Chief Legal Counsel sent a letter to the consulting firm discussing whether the firm should reimburse Mr. McLaren under the contract between the firm and the STRS. Mr. McLaren believed that the Chief Legal Counsel gave the firm the approval to reimburse him. The Chief Legal Counsel told us, on the contrary, that the letter authorized the

firm to reimburse two additional candidates who were interviewed for the position; the intent of the letter was never to authorize the firm to reimburse Mr. McLaren for his expenses. Nevertheless, Mr. McLaren subsequently submitted his expenses of \$1,390.12 to the STRS for reimbursement.

The STRS paid \$2,478.37 directly to travel agencies or hotels. Mr. McLaren incurred the majority of these expenses during an approved out-of-state trip between November 25 and December 5, 1984. Various members of the board and the STRS staff accompanied Mr. McLaren on this trip to interview external money managers. We found that Mr. McLaren did not attend the interviews on November 29 and 30; therefore, he should either return to the STRS one unused railroad ticket (Philadelphia to Baltimore) and one unused airline ticket (Baltimore to Chicago) or reimburse the STRS \$253.00.

The STRS also reimbursed Mr. McLaren \$524.08 for authorized trips taken between September 5 and 7 to Tacoma, Washington, and between September 19 and 21 to Los Angeles. We reviewed the expenses and found that the STRS paid Mr. McLaren \$49.00 for an airline ticket that the STRS had purchased directly from a travel agency. Therefore, the STRS should recover this overpayment of \$49.00 from Mr. McLaren.

Finally, the STRS issued a telephone charge card to Mr. McLaren for his use both while he was under contract and while he was an employee. From August 14 to December 12, 1984, Mr. McLaren made

telephone calls at a cost of \$687.16 that were charged to his telephone charge card. Department of General Services guidelines prohibit the use of these cards for personal telephone calls. However, the STRS did not review the appropriateness of Mr. McLaren's charges.

We found that Mr. McLaren made numerous calls from various locations to his home in St. Paul. The total cost of these calls was \$71.19. Mr. McLaren said that the STRS gave him approval to use the telephone charge card to call his home in St. Paul. However, the Deputy CEO said that the STRS had not given Mr. McLaren approval to use the telephone charge card for calling his home. Furthermore, the Deputy CEO said that he told Mr. McLaren on at least two occasions that personal calls should not be charged to the card. Mr. McLaren said that all other calls he charged, many of which were made to various persons within the investment community, were related to STRS business. We could not determine the appropriateness of the remaining telephone charges.

As of January 8, 1985, Mr. McLaren had not submitted all of the travel expenses that he incurred while he was employed by the STRS. During that period, he made at least one other trip from St. Paul to Sacramento. He told us that he was preparing his claims and would file them with the STRS for reimbursement. He did not indicate the total amount of these expenses.

CONCLUSION AND RECOMMENDATIONS

The State Teachers' Retirement System should have more closely followed state administrative procedures in the contracting and employment of its Chief Executive Officer. The STRS did not adhere to Public Contract Code requirements because it did not obtain prior approval by the Department of General Services for the STRS' consulting contract with Mr. McLaren and because it did not require more detailed information from Mr. McLaren about the services he provided. Consequently, we could not document all of the activities that were claimed for the \$10,000 consulting fee or assure that the STRS had adequately monitored the delivery of consulting services. Furthermore, if the STRS had included in its contract with Mr. McLaren the provisions required by the State Administrative Manual concerning consultants' travel expenses, it would not have overpaid him \$360 in expenses.

Additionally, if the STRS had followed state law regarding the repayment of relocation expenses for the CEO, it would not have authorized a contract for relocation expenses, including the purchase of Mr. McLaren's Minnesota residence. Although an Attorney General's opinion convinced the STRS not to execute the contract and risk obligating up to \$52,500 in state funds for an improper transaction, the STRS could be liable for \$1,120 in expenses incurred by the

relocation company acting on the verbal instructions of the STRS' Chief Legal Counsel.

After Mr. McLaren was appointed as CEO, he spent a significant amount of his time in Minnesota. Although Mr. McLaren claims he was given approval to work on STRS business out of state, Section 11033 of the Government Code requires that the Governor and the Director of Finance approve, in advance, all work that state employees undertake outside of California. The necessary approval was obtained for only 20 percent of Mr. McLaren's out-of-state work.

Finally, Mr. McLaren has submitted nearly \$6,800 in expense receipts for trips he took between St. Paul, Minnesota, and Sacramento, other out-of-state trips, and lodging and subsistence expenses he incurred while staying in Sacramento. All of these expenses violate state law or regulation and should not be paid. The STRS should also recover \$773.19 from Mr. McLaren for an unused travel advance of \$400, travel overpayments of \$302, and personal telephone use charges of \$71.19. The STRS should review in detail any additional or pending claims by Mr. McLaren before payment.

## Recommendations

The State Teachers' Retirement System should comply with all state laws and administrative procedures in its contracting and employment activities unless it can demonstrate that its investment authority would be significantly hampered by such compliance. In future consulting contracts, the STRS should do the following:

- Include the provisions of Section 1243 of the State Administrative Manual within all consulting contracts to ensure that consulting contractors are not paid travel expenses in excess of amounts paid to the STRS' represented employees;
- Provide procedures in the contracts for documenting the services to be provided by consultants and require a detailed analysis of the costs of the services rendered before paying these consultants;
- Prepare the pre- and post-evaluations of the consulting contracts promptly and use them to monitor and review the delivery of services;
- Review all expense receipts submitted by consultants for compliance with contract terms before reimbursing these expenses; and

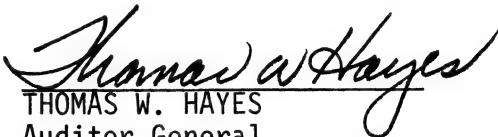
- Obtain an opinion from the Attorney General delineating when the STRS is authorized to circumvent state laws or regulations, and the specific conditions that must be met to authorize the circumvention.

Regarding the contract and subsequent employment of Mr. McLaren as Chief Executive Officer, the STRS should do the following:

- Continue to withhold payment for the \$6,800 in travel expenses incurred by Mr. McLaren that are not authorized by state law or regulation;
- Determine the appropriateness of the salary paid to Mr. McLaren while he was working out of state without the required approval. If the STRS identifies any inappropriate salary payments, the STRS should recover the payments from Mr. McLaren;
- Recover approximately \$770 from Mr. McLaren for the unused travel advance, for overpayment of travel expenses, and for personal telephone use; and
- Review all charges that Mr. McLaren made to his telephone charge card and assure that the charges were related to STRS business. The STRS should recover from Mr. McLaren the cost of any telephone calls unrelated to STRS business.

We conducted this review under the authority vested in the Auditor General by Section 10500 et seq. of the California Government Code and according to generally accepted governmental auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



THOMAS W. HAYES  
Auditor General

Date: January 10, 1985

Staff: Kurt R. Sjoberg, Chief Deputy Auditor General  
Tim Bryan  
Ann Reicherter, CPA  
Mark C. Lamb, CPA



## State and Consumer Services Agency

(916) 323-9493  
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OFFICE OF THE SECRETARY  
915 Capitol Mall, Suite 200  
Sacramento, CA 95814

January 9, 1985

Mr. Thomas W. Hayes  
Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Hayes:

The State and Consumer Services Agency has reviewed the Auditor General report, "An Analysis of the State Teachers' Retirement System's Hiring and Compensation of Its Chief Executive." While the time constraints have precluded discussion with members of the State Teachers' Retirement System (STRS) Board and executives of the System, it is clear that the liberal interpretation of the statutes allowing limited oversight of specific investment-related matters have been construed to allow normal state employment and operations to be carried out without the approval of the executive branch nor subject to the legislative budget process.

The Public Contract Code represents legislative intent to protect the interests of state government through strict adherence to sound business practices. This intent, as resolved by the Board of Administration, recognizes its value in preserving retirement funds. The review process of such contracts should not circumvent the executive branch control agencies nor procedures regardless of the source of funding. Those unique circumstances under which investment activities involve contracts should be conducted and audited using the criteria resolved by the Board of Administration of the System.

The State and Consumer Services Agency concurs strongly with the recommendations of the Auditor General and will work directly with the Board and members of the staff to develop policies and procedures to ensure that the System conforms to state law and procedures while at the same time properly exercising its fiduciary responsibilities.

Sincerely,

A handwritten signature in cursive ink that reads "Shirley R. Chilton".

SHIRLEY R. CHILTON  
Secretary of the Agency

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DEPARTMENTS AND PROGRAMS OF THE AGENCY

## STATE TEACHERS' RETIREMENT SYSTEM

P.O. BOX 15275-C  
SACRAMENTO, CALIFORNIA 95851



(916) 386-3700

January 10, 1985

Hon. Thomas W. Hayes  
Auditor General  
Office of the Auditor General  
660 J Street, Suite 300  
Sacramento, CA 95814

Dear Mr. Hayes:

After consultation with Judith O. Powell, Chairperson, and members of the Teachers' Retirement Board and on behalf of the State Teachers' Retirement System (STRS), I am responding to your draft report entitled, "An Analysis of the State Teachers' Retirement System's Hiring and Compensation of Its Chief Executive Officer". Since the System was allowed only 24 hours to review the report, the Teachers' Retirement Board is unable to formally develop a response.

Necessarily, my comments are directed at what I perceive to be the major findings included in the report. Although there are a number of more detailed, technical and legal issues, they are not addressed because of the time constraints. As an overall observation, it is my opinion that you have verified that there are no material weaknesses relating to STRS control systems. More specifically your audit report:

1. Accurately portrayed the very thorough and exhaustive process followed by the System in the recruitment of Mr. McLaren as the Chief Executive Officer and, in our opinion, assured that the process was adequate.
2. Verified that the intent of the consulting contract between STRS and Mr. McLaren was to allow Mr. McLaren's participation in the development and decision-making process of the System's investment program. You noted that Mr. McLaren indicated "...the purpose of the consulting contract was to enable him to become familiar with the STRS' policies and procedures and with the STRS' investment program...." and not to "...circumvent the maximum salary limitation prescribed by California statute...." as he earlier testified before a Minnesota Legislative Committee.
3. Revealed that the System did not execute a contract for Mr. McLaren's relocation with Home Purchase Corporation due to an Attorney General Opinion requested by the State Controller's Office.

Hon. Thomas W. Hayes  
January 10, 1985  
Page Two

4. Verified that some expenses submitted by Mr. McLaren (and not paid by STRS) should not have been paid. Unfortunately, the report did not disclose that the System has conducted its own investigation of all monetary transaction involving Mr. McLaren and that we are already in the process of resolving audit exceptions.
5. Although your specific recommendations have not been reviewed by members of the Teachers' Retirement Board, it is my observation that they are reasonable and it is my intent to pursue them with the Board and the staff.

Finally, as I mentioned earlier there are a number of detailed, technical and legal issues along with some identified errors in your draft report that the staff and I will be addressing in a more thorough analysis. At such time that we have completed our analysis, it is my intent that a complete report will be provided the Teachers' Retirement Board. In closing, I wish to acknowledge the professionalism demonstrated by your audit team in carrying out their assignment.

Sincerely,



ROBERT F. ROBERTS  
Chief Executive Officer

cc: Teachers' Retirement Board

**C. MICHAEL MCCLAREN**  
**CHRONOLOGY AND SCHEDULE OF EXPENSES**  
**STATE TEACHERS' RETIREMENT SYSTEM**  
JULY 10, 1984 THROUGH DECEMBER 12, 1984

Date	Location/Purpose	Type of Expense	Amount	Amount Allowable Under DPA Regulations	Comments	Telephone Charges/ Location	Consulting Fee/Salary
CONTRACT PERIOD							CONSULTING FEE
07/10/84	Los Angeles Attend board meeting						
07/11/84	Sacramento						
07/12/84	Sacramento						
07/13/84	Sacramento						
07/14/84	Minneapolis						
07/15/84	Green Bay, Wisconsin						
07/16/84	Fishing trip Green Bay, Wisconsin						
07/17/84	Green Bay, Wisconsin						
07/18/84	Green Bay, Wisconsin						
07/19/84	St. Paul*						
07/20/84	St. Paul*						
07/21/84	St. Paul*						
07/22/84	St. Paul*						
07/23/84	St. Paul*						
07/24/84	Bloomington, Minnesota						
07/25/84	Bloomington, Minnesota						
07/26/84	Duluth, Minnesota						
07/27/84	Duluth, Minnesota*						
07/28/84	Duluth, Minnesota*						
07/29/84	Duluth, Minnesota*						
07/30/84	Illinois						
07/31/84	Illinois						
08/01/84	Illinois						
08/02/84	Illinois*						
08/03/84	Wisconsin						
08/04/84	Wisconsin*						
08/05/84	St. Paul to San Francisco to Sacramento	air fare	\$950.00	\$950.00			
08/06/84	Attend a board meeting concerning investment matters	lodging and incidentals	\$317.00	\$690.00 of first class			
08/07/84	Sacramento	meal	\$23.00	\$62.00 Per diem			
08/08/84	Sacramento	meal	\$39.00	\$62.00 Per diem			
08/09/84	Sacramento	meal	\$19.95	\$62.00 Per diem			
08/10/84	Sacramento	meal	\$61.45	\$62.00 Per diem			
08/11/84	Sacramento to San Francisco to Los Angeles Los Angeles	lodging air fare lodging and incidentals	\$86.11 \$69.00 \$111.26	\$0 \$69.00 \$70.00			
08/12/84	Los Angeles to San Francisco San Francisco to Sacramento	car fare air fare lodging and incidentals	\$21.00 \$25.00 \$111.26	\$21.00 \$25.00 \$69.00			
08/13/84	Sacramento to San Francisco San Francisco	lodging and incidentals	\$107.70	\$62.00 Per diem			
		parking lodging car rental	\$13.50 \$62.00 \$285.35	\$13.50 \$62.00 \$285.35			
					Allowed air fare for full coach instead of first class		
					Per diem		
					\$2,000		
					STS disallowed \$28.57		
					Per diem		
					STS disallowed \$45.92		
					Per diem		
					STS disallowed \$16.04		
					Per diem		
					STS disallowed \$20.90		
					Per diem		
					Allowed car rental for intermediate size car instead of a luxury car		
					Per diem		
					\$1,560		

APPENDIX A

\*While no direct evidence was available to verify his location on this date, we have assumed that he did not leave the general area of his last verified location.

Date	Location/Purpose	Type of Expense	Amount**	Amount Allowable Under DPA Regulations	Comments	Telephone Charges/ Location	Consulting Fee/Salary
CONTRACT PERIOD							CONSULTING FEE
08/14/84	San Francisco to St. Paul	parking	\$17.00	\$17.00			
08/15/84	St. Paul	postage	\$18.70	\$18.70			\$21.70/St. Paul \$9.87/St. Paul
08/16/84	St. Paul						\$2.47/St. Paul
08/17/84	St. Paul						
08/18/84	St. Paul*	air fare	\$390.00	\$0	Trip not taken STRS disallowed \$790.00		
08/19/84	St. Paul to Seattle						
08/20/84	St. Paul*						
08/21/84	St. Paul*						
08/22/84	St. Paul*						
08/23/84	St. Paul to Los Angeles	air fare	\$800.00	\$0	Trip not taken STRS disallowed \$800.00		
08/24/84	St. Paul to Chicago	air fare	\$80.00	\$80.00			\$1.65/Chicago \$2.14/St. Paul
	Meet with Investment consultants						
	Chicago to St. Paul						
08/25/84	St. Paul	parking	\$5.00	\$5.00			\$7.31/St. Paul
08/26/84	St. Paul*						
08/27/84	St. Paul						
08/28/84	St. Paul*						
08/29/84	St. Paul to San Francisco	air fare	\$924.00	\$0	Trip not taken STRS disallowed \$924.00		
08/30/84	to Sacramento	air fare	\$120.00	\$120.00			\$3.06/St. Paul \$2.47/St. Paul
	Meet with Investment consultants	air fare	\$5.00	\$5.00			
	Chicago to St. Paul	parking					
	Total - Contract Period		<u>\$5,108.36</u>	<u>\$2,122.55</u>			<u>\$61.48</u>
							<u>\$10,000</u>
EMPLOYMENT PERIOD						SALARY	
08/31/84	St. Paul					\$6.53/St. Paul	
09/01/84	St. Paul*						
09/02/84	St. Paul to Rochester, Minnesota***	air fare	\$386.00	\$0	Relocation expenses not allowed (Section 599.14 and 599.722 of Title 2 of the California Administrative Code)	\$1.90/Rochester \$1.76/St. Paul \$6.37/San Francisco	
09/03/84	Rochester, Minnesota to St. Paul to San Francisco to Sacramento				Relocation expenses not allowed	\$3.87/Sacramento	
09/04/84	Sacramento	lodging and incidentals	\$169.40	\$0	Relocation expenses not allowed STRS made direct payment to travel agency	\$8.22/Sacramento	
09/05/84	Sacramento to Seattle	car rental	\$133.54	\$0	Out-of-state travel approved between 9/5 and 9/7		
	Meet With Investment Consultants	air fare	\$120.00	\$420.00			
09/06/84	Seattle to Tacoma	subsistence	\$31.00	\$31.00	STRS reimbursed total expense	\$6.16/Tacoma	
	Tacoma	subsistence	\$14.00	\$14.00	STRS reimbursed total expense	\$5.83/Seattle	
	Tacoma to Seattle	car rental	\$52.10	\$52.10	STRS reimbursed total expense		
09/07/84	Seattle to San Francisco to Sacramento	hotel	\$137.98	\$137.98	STRS reimbursed total expense	\$7.63/Seattle \$5.21/San Francisco	
09/08/84	Sacramento						
09/09/84	Sacramento						
09/10/84	Sacramento						
09/11/84	Sacramento						
		lodging and incidentals	\$501.09	\$0	Relocation expenses not allowed		

\*While no direct evidence was available to verify his location on this date, we have assumed that he did not leave the general area of his last verified location.

\*\*All amounts during the employment period have been submitted by Mr. McLaren but have not been paid unless otherwise noted in the comments.

\*\*\*While no direct evidence was available to verify his location on this date, we have assumed he had to travel to his next verified location.

Date	Location/Purpose	Type of Expense	Amount **	Amount Allowable Under DPA Regulations	Comments	Telephone Charges/ Location	Consulting Fee/Salary	<u>SALARY</u>
<u>EMPLOYMENT PERIOD</u>								
09/12/84	Sacramento to San Francisco to St. Paul	air fare car rental parking	\$185.00 \$76.35 \$8.50	\$0 \$0 \$0	Relocation expenses not allowed Relocation expenses not allowed Relocation expenses not allowed			
09/13/84	St. Paul*							
09/14/84	St. Paul*							
09/15/84	St. Paul	parking meal	\$2.00 \$21.13	\$0 \$0	No out-of-state travel approval No out-of-state travel approval No out-of-state travel approval No out-of-state travel approval No out-of-state travel approval Relocation expenses not allowed Relocation expenses not allowed			
09/16/84	St. Paul	air fare parking meal	\$10.00 \$33.50	\$0 \$0	SPRS made direct payment to travel agency			
09/17/84	St. Paul to Chicago Chicago to St. Paul	meal	\$18.00	\$0	SPRS reimbursed total expense			
09/18/84	St. Paul to San Francisco to Sacramento	air fare lodging car rental air fare	\$375.00 \$36.38	\$0 \$0	SPRS reimbursed total expense			
09/19/84	Sacramento to Los Angeles Meet with consultants and attend board meeting	air fare	\$57.00	\$57.00	SPRS reimbursed total expense			
09/20/84	Los Angeles Los Angeles	subsistence subsistence taxi	\$86.00 \$86.00 \$68.00	\$86.00 \$86.00 \$0	SPRS reimbursed total expense			
09/21/84	Los Angeles to St. Paul	air fare parking	\$365.00 \$9.50	\$0 \$0	Relocation expenses not allowed			
09/22/84	St. Paul*							
09/23/84	St. Paul*							
09/24/84	St. Paul	meal	\$20.00	\$0	No out-of-state travel approval			
09/25/84	St. Paul	meal						
09/26/84	St. Paul	meal						
09/27/84	St. Paul	meal						
09/28/84	St. Paul	meal						
09/29/84	St. Paul	meal						
09/30/84	St. Paul	meal						
10/01/84	St. Paul	air fare car fare car fare	\$13.00 \$28.00 \$38.00	\$0 \$0 \$0	No out-of-state travel approval			
10/02/84	St. Paul to New York To meet with consultants	meal	\$11.00	\$0	No out-of-state travel approval			
10/03/84	New York	meal	\$22.00	\$0	No out-of-state travel approval			
10/04/84	New York	lodging and incidentals	\$17.07 \$561.05	\$0 \$0	No out-of-state travel approval			
10/05/84	New York to St. Paul							
10/06/84	St. Paul*							
10/07/84	St. Paul							
10/08/84	St. Paul to San Francisco to Sacramento	air fare	\$385.00	\$0	Relocation expenses not allowed			
10/09/84	Attend a board meeting Sacramento	lodging and incidentals	\$421.85	\$0	Relocation expenses not allowed			
10/10/84	Sacramento	lodging and incidentals	\$65.25	\$0	Hotel bill is for 10/12/84; yet the meeting was at 12:00 on 10/13/84			
10/11/84	Sacramento	lodging						
10/12/84	Sacramento to San Francisco Attend the California Retired Teachers Association meeting							
10/13/84	San Francisco to Sacramento							
10/14/84	Sacramento							
10/15/84	Sacramento							
10/16/84	Sacramento							
10/17/84	Sacramento							
10/18/84	Sacramento Sacramento	parking lodging and incidentals	\$35.00 \$7.50 \$66.20	\$35.00 \$0 \$0	Membership fees to the Western Pension Conference			
10/19/84		air fare parking			STRS made direct payment to conference			
10/20/84	Sacramento to San Francisco to St. Paul	lodging and incidentals	\$334.00	\$0	Relocation expenses not allowed			
10/21/84	St. Paul	air fare parking	\$64.00	\$0	Relocation expenses not allowed			
10/22/84	St. Paul							
10/23/84	St. Paul							
10/24/84	St. Paul							

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Date	Location/Purpose	Type of Expense	Amount **	Amount Allowable Under DPA Regulations	Comments	Telephone Charges/ Location	Consulting Fee/Salary
EMPLOYMENT PERIOD						SALARY	
10/25/84	St. Paul					\$18.49/St. Paul \$3.99/Rochester, Minnesota \$2.50/St. Paul	
10/26/84	St. Paul						
10/27/84	St. Paul						
10/28/84	St. Paul*						
10/29/84	St. Paul						
10/30/84	St. Paul to San Francisco to Sacramento	air fare	\$462.00	\$0	Relocation expenses not allowed	\$8.65/St. Paul \$1.78/San Francisco \$2.82/Sacramento \$7.29/Sacramento	
10/31/84	Sacramento	lodging and incidentals	\$204.46	\$0	Relocation expenses not allowed	\$1.90/Davis \$3.13/Sacramento \$3.26/Missouri \$5.82/Illinois \$5.63/Illinois	
11/01/84	Sacramento to Missouri						
11/02/84	Missouri to Illinois						
11/03/84	Illinois						
11/04/84	Illinois to St. Paul*						
11/05/84	St. Paul						
11/06/84	St. Paul*						
11/07/84	St. Paul*						
11/08/84	St. Paul*						
11/09/84	St. Paul*						
11/10/84	St. Paul						
11/11/84	St. Paul*						
11/12/84	St. Paul						
11/13/84	St. Paul to Sacramento						
11/14/84	Attend a board meeting Sacramento						
11/15/84	Sacramento						
11/16/84	Sacramento						
11/17/84	Sacramento to St. Paul*						
11/18/84	St. Paul*						
11/19/84	St. Paul						
11/20/84	St. Paul						
11/21/84	St. Paul						
11/22/84	St. Paul*						
11/23/84	St. Paul*						
11/24/84	St. Paul						
11/25/84	St. Paul to Boston Interview external money managers	air and rail fare	\$661.00***	\$661.00	Out-of-state travel approved from STRS made direct payment to travel agency	\$4.73/St. Paul \$1.65/Minneapolis	
11/26/84	Boston to New York	lodging (from 11/25 to 12/5)	\$473.37***	\$473.37	STRS made direct payment to hotel	\$18.95/Philadelphia	
11/27/84	New York to Philadelphia						
11/28/84	Philadelphia to St. Paul						
11/29/84	St. Paul						
11/30/84	St. Paul*						
12/01/84	St. Paul						
12/02/84	St. Paul*						
12/03/84	St. Paul to Newport Beach	air fare	\$832.00	\$832.00	STRS made direct payment to travel agency	\$3.62/San Francisco	
12/04/84	Newport Beach to San Francisco to Houston to Dallas to Sacramento						
12/05/84	Houston to Dallas to Sacramento						
12/06/84	Sacramento						
12/07/84	Sacramento						
12/08/84	Sacramento*						
12/09/84	Sacramento*						
12/10/84	Sacramento						
12/11/84	Sacramento						
12/12/84	Sacramento						
Total - Employment Period			\$ 9,798.57	\$2,953.45		\$625.68	\$18,444.99
Total - Contract Period			\$ 5,108.36	\$2,122.55		\$ 61.48	\$10,000.00
Grand Total			\$14,906.93	\$5,076.00		\$687.16	\$28,444.99

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\*\*\*Because Mr. McLaren did not attend the interviews on 11/29/84 and 11/30/84, he owes the STRS for one railroad ticket between Philadelphia and Baltimore and one airline ticket between Baltimore and Chicago. Further, the hotels to which the STRS made advance payments will be reimbursed the STRS for Mr. McLaren's cancellations.

cc: Members of the Legislature  
Office of the Governor  
Office of the Lieutenant Governor  
State Controller  
Legislative Analyst  
Assembly Office of Research  
Senate Office of Research  
Assembly Majority/Minority Consultants  
Senate Majority/Minority Consultants  
Capitol Press Corps